

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

DUVAL MANAGEMENT ONE  
TRUST,

Appellant,

v.

Case No. 3:22-cv-1130-TJC

UMB, NATIONAL ASSOCIATION,  
Not in its individual capacity but  
solely as Legal Title Trustee for LVS  
Title Trust XIII,

Appellee.

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**ORDER**

This bankruptcy appeal is before the Court on Appellant's Notice of Status of Appeal (Doc. 9) and Appellee's Response (Doc. 11). The Court ordered Appellant to file the Notice and to state why the appeal should not be dismissed for failure to prosecute after its initial brief was more than four months overdue. (Doc. 7). On the date of the deadline, Appellant filed the Notice and its initial brief. (Docs. 9; 10). In the Notice, Appellant attributed the delay to "pre-existing obligations, excusable neglect, and a desire for more clarity as to the position of state courts as to some of the issues presented in the appeal." (Doc. 9 at 1). As pointed out in Appellee's response to the Notice, this statement sheds little light on why Appellant waited so long to file its brief. (Doc. 11 at 2).

Under Rule 8018 (a)(4) of the Federal Rules of Bankruptcy Procedure, “[i]f an appellant fails to file a brief on time . . . an appellee may move to dismiss the appeal—or the district court or BAP, after notice, may dismiss the appeal on its own motion.” “Failure to timely file an initial brief is ‘a non-jurisdictional defect in the prosecution of [an] appeal, and such defect does not require dismissal in every case.’” In re Daughtrey, No. 2:15-CV-29-FTM-29, 2015 WL 1268324, at \*2 (M.D. Fla. Mar. 19, 2015) (quoting In re Beverly Mfg. Corp., 778 F.2d 666, 667 (11th Cir. 1985)). But, the Eleventh Circuit has held that a debtor’s failure to timely file an initial brief or otherwise prosecute a bankruptcy appeal constitutes grounds for dismissal. Lawrence v. Educ. Credit Mgmt., Corp., 522 Fed. App’x 836, 840 (11th Cir. 2013) (affirming dismissal of appeal for failure to prosecute when the appellant filed no brief, never requested an extension of time for filing his initial brief, and had not otherwise appeared in the case after five months).

In its response, Appellee seeks dismissal of the appeal for Appellant’s failure to file its brief and prosecute the appeal. (Doc. 11 at 4). The Court agrees and finds that Appellant has failed to file its brief on time by a significant margin and has provided no meaningful explanation for the months-long delay. Appellant also took no action in the appeal after the record was transmitted on November 17, 2022, indicating Appellant did not intend to pursue its appeal. (See Doc. 6). “Time limits for filing of briefs are designed to encourage swift

prosecution of appeals.” In re Beverly Mfg. Corp., 778 F.2d at 667 (citing West v. Falconer, 17 B.R. 929 (Bkrtcy. S.D. Ill. 1982)). Had the Court never ordered Appellant to identify the status of the appeal, the Court questions if Appellant would have taken action on the appeal at all. Moreover, the Appellant’s perfunctory response to the Court’s inquiry about the delay only further supports that Appellant’s delay resulted from negligence or indifference to the appeal. See In re Stanger, No: 2:15-cv-275-FTM-38, 2015 WL 7351389, at \*2 (M.D. Fla. Nov. 20, 2015) (dismissing appeal for failure to prosecute, as the appellant failed to file a brief, request an extension of time, or inquire to the Court about his appeal after about five months passed since the Bankruptcy Record had been filed). Therefore, pursuant to Rule 8018 (a)(4) of the Federal Rules of Bankruptcy Procedure, the Court find the appeal is due to be dismissed for Appellant’s failure to timely file its brief and otherwise prosecute the appeal.

Accordingly, it is hereby

**ORDERED:**

1. Duval Management One Trust’s Appeal is **DISMISSED**.
2. The Clerk shall terminate all pending motions and close the file.

**DONE AND ORDERED** in Jacksonville, Florida the 11th day of May,  
2023.



*Timothy J. Corrigan*  
TIMOTHY J. CORRIGAN  
United States District Judge

ksm  
Copies:

Counsel of record